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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/752,712	
	Filing Date	December 28, 2000	
	First Named Inventor	James E. Parker	
	Art Unit	1743	
	Examiner Name	Samuel P. Siefke	
Total Number of Pages in This Submission		Attorney Docket Number	VTECH 48514

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	FULWIDER PATTON LEE & UTECHT, LLP Customer No. 24201
Signature	<i>David G. Parkhurst</i>
Date	December 2, 2004

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the			
Typed or printed name	David G. Parkhurst	Date	December 2, 2004
Signature	<i>David G. Parkhurst</i>		

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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COMPLETE TRANSMITTAL for FY 2005 <i>Effective 10/01/2004. Patent fees are subject to annual revision.</i>		Complete if Known	
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	09/752,712
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		First Named Inventor	James E. Parker
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TOTAL AMOUNT OF PAYMENT (\$) \$170.00		Attorney Docket No.	VTECH-48514

METHOD OF PAYMENT (check all that apply)		FEE CALCULATION (continued)																																																																																																																																																																																															
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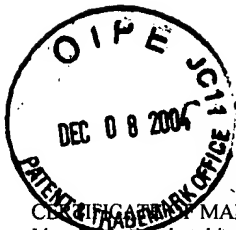
*Reduced by Basic Filing Fee Paid

SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	David G. Parkhurst	Registration No. (Attorney/Agent)	310-824-5555
Signature	<i>David G. Parkhurst</i>	Date	December 2, 2004

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EXAMINING GROUP 1743

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Alexandria, VA 22313-1450 on December 2, 2004.

David G. Parkhurst, Reg. No. 29,422

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

JAMES E. PARKER

Serial No. 09/752,712

Filed: December 28, 2000

For: DRUG TEST KIT

Examiner: Samuel P. Siefke

Group Art Unit: 1743

Docket No.: VTECH-48514

December 2, 2004

Los Angeles, California 90045

APPEAL BRIEF

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A Notice of Appeal was filed on October 4, 2004, from the final rejection dated June 2, 2004 and the Advisory Action dated August 30, 2004 finally rejecting claims 1-6 and 9-13. The two month deadline from the Notice of appeal date is December 4, 2004, and this Appeal Brief is being filed within the term provided as permitted under 37

C.F.R. § 1.192(a).

12/09/2004 JBALINAN 00000005 09752712

01 FC:2402

170.00 DP

I. REAL PARTY IN INTEREST

The real party in interest is MODERN OPTICS, INC. This application was assigned by the inventor, JAMES E. PARKER to MODERN OPTICS, INC., by an assignment executed December 5, 2000, which was recorded by the Patent Office on December 28, 2000, at reel 011703, frame 0977.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 15-16, 18, 20, 21 and 23 remain pending, and were finally rejected in an Office Action dated June 2, 2004, and in the Advisory Action of August 30, 2004.

IV. STATUS OF AMENDMENTS

The claims were most recently amended in the Amendment of March 11, 2004, which was entered.

V. SUMMARY OF THE INVENTION

Appellant's invention comprises an assaying apparatus for collecting and analyzing a liquid sample, such as urine, for the presence or absence of a plurality of analytes such as drug metabolites in the liquid sample. The assaying apparatus provides

for automatic wicking of the liquid sample to an assay region of an assay strip isolated within an assay container once the liquid sample is introduced into the assaying container, providing a controlled flow of the liquid sample to the assay region of the assay strip.

The embodiment of the invention currently claimed is generally depicted in Figs. 4-5, and is described in the detailed description from page 8, line 17, to page 9, line 9. As is recited in Claim 15, the **assaying apparatus** (60) for collecting and analyzing a liquid sample for an analyte in the liquid sample includes a **container** (62) having an **interior sample chamber** (64) with a liquid sample space, and the **container** (62) has a surface defining an opening in communication with the **interior sample chamber** (64). The **assaying apparatus** (60) also includes a **cap** (68) adapted to be placed on the **container** (62) opening for closing the **container** (62) opening and sealing the **container** (62). An **assay strip** (70) is disposed in the **cap** (68), and the **assay strip** (70) has an **assay region** (72) disposed in the **cap** (68) for indicating the presence or absence of an analyte in a liquid sample placed in the liquid sample space of the **interior sample chamber** (64). The **cap** (68) includes a **separator member** (84) disposed between the **assay strip** (70) and the **interior sample chamber** (64) for separating the liquid sample space from the **assay region** (72) of the **assay strip** (70). A **wick** (78) is mounted to the **cap** (68) and extends into the liquid sample space of the **interior sample chamber** (64) when the **cap** (68) is placed on the **container** (62). The **wick** (78) is in fluid communication with the **assay strip** (70) for conducting a portion of the liquid sample from the **interior sample chamber** (64) to the **assay region** (72) of the **assay strip** (70). An **annular bridging**

wick piece (80) is located adjacent to and in fluid communication with the **wick (78)** and in immediate contact with the **assay strip (70)** for conducting the liquid sample from the **wick (78)** to the **assay strip (70)**.

As is recited in Claim 16, the **assaying apparatus (60)** can have a **transparent cover (82)** over the **assay strip (70)** permitting observation of the results of the assay.

As is recited in Claim 18, the **assay strip (70)** can include **wicking material (86)** for conducting the liquid sample from the **wick (78)** to the **assay region (72)** of the **assay strip (70)**.

As is recited in Claim 20, the **assaying apparatus (60)** for collecting and analyzing a liquid sample for the presence or absence of a plurality of analytes in the liquid sample includes a **container (62)** having an **interior sample chamber (64)** with a liquid sample space, and the **container (62)** has a surface defining an opening in communication with the **interior sample chamber (64)**. The **assaying apparatus (60)** includes a **cap (68)** adapted to be placed on the **container (62)** opening for closing the **container (62)** opening and sealing the **container (62)**. A plurality of **assay strips (70)** are disposed in the **cap (68)**, with each **assay strip (70)** having an **assay region (72)** disposed in the **cap (68)** for indicating the presence or absence of one of a plurality of analytes in a liquid sample placed in the liquid sample space of the **interior sample chamber (64)**. The **cap (68)** includes a **separator member (84)** disposed between the **assay strips (70)** and the **interior sample chamber (64)** for separating the liquid sample space from the **assay region (72)** of the **assay strips (70)**. A **wick (78)** is mounted to the **cap (68)** and extends into the liquid sample space of the **interior sample chamber (64)**

when the **cap** (68) is placed on the **container** (62). The **wick** (78) is in fluid communication with the **assay strips** (70) for conducting a portion of the liquid sample from the **interior sample chamber** (64) to the **assay region** (72) of the **assay strips** (70). An **annular bridging wick piece** (80) is located adjacent to and in fluid communication with the **wick** (78) and in immediate contact with the **assay strips** (70) for conducting the liquid sample from the **wick** (78) to the **assay strips** (70).

As is recited in Claim 21, the assaying apparatus can include a **transparent cover** (82) over the **assay strips** (70) permitting observation of the results of the assays.

As is recited in Claim 23, the **assay strips** (70) include **wicking material** (86) for conducting the liquid sample from the **wick** (78) to the **assay regions** (72) of the **assay strips** (70).

VI. ISSUES ON APPEAL

A. THE EXAMINER'S REJECTIONS

In the final Office Action of June 2, 2004, Claims 15-16, 18, 20, 21 and 23 were rejected under 35 U.S.C. 103(a) on the grounds of obviousness from U.S. Patent No. 6,627,152 to Wong in view of U.S. Patent No. 6,168,758 to Forsberg et al. Wong was cited as disclosing a wick mounted to the cap and extending the liquid sample space of the interior sample chamber when the cap is placed on the container. Forsberg et al. was cited as disclosing a wicking pad 128 in contact with a wick 120 and that is used to bridge the wick 120 to an assay strip. The Examiner argued that it would have been obvious to modify Wong to include the liquid conveying system of Forsberg et al. to

facilitate liquid transport of a liquid sample to a test strip without flooding the test strip. Claims 15 and 20 recite "a container having an interior sample chamber with a liquid sample space," and "a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container." Claim 15 also recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip." Claim 20 similarly recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strips for conducting the liquid sample from said wick to said assay strips." In the Advisory Action of August 30, 2004, the Examiner argued that the prior art discloses each and every limitation in Claims 15-16, 18, 20, 21 and 23, and that "it is known in the art of test strips that annular bridge pieces are used to facilitate in [sic] liquid transport of th [sic] liquid sample to the test strip without [sic] flooding the test strip."

B. THE ISSUES FOR DETERMINATION

In view of the Examiner's rejections and arguments, Appellant respectfully submits that the issues on appeal are as follows:

- 1) Whether the prior art cited discloses a wick mounted to the cap of a container and extending into the liquid sample space of the interior sample chamber when the cap is placed on the container, as is recited in Claims 15 and 20, so as to render the claims obvious under 35 U.S.C. §103.

2) Whether the prior art cited discloses an annular bridging wick piece adjacent to and in fluid communication with a wick, and in immediate contact with an assay strip or strips for conducting a liquid sample from the wick to the assay strip or strips, as is recited in Claims 15 and 20, so as to render the claims obvious under 35 U.S.C. §103.

VII. GROUPING OF CLAIMS

Claims 15-16, 18, 20, 21 and 23 stand or fall together.

VIII. ARGUMENTS

A. THE REJECTION OF CLAIMS 15-16, 18, 20, 21 AND 23 AS OBVIOUS

1. WONG AND FORSBERG ET AL. DO NOT DISCLOSE A CAP WITH TEST STRIP END PORTIONS EXTENDING INTO A CONTAINER INTERIOR SAMPLE CHAMBER LIQUID SAMPLE SPACE WHEN A CAP IS PLACED ON THE CONTAINER

Regarding the rejection of Claims 15-16, 18, 20, 21 and 23, it is respectfully submitted that Wong and Forsberg et al. do not teach, disclose or suggest test strip end

portions that extend into the liquid sample space of the interior sample chamber when the cap is placed on the container. Claims 15 and 20 recite "a container having an interior sample chamber with a liquid sample space," and "a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container."

Wong was cited as disclosing a wick that extends into a sample when the cap is on the container, and the Examiner referred to Fig. 8 of Wong. Fig. 8 of Wong shows a vessel 20 with fluid 130 in the vessel, and it is clear that the end portion 122 of each test strip 120 does not extend into the fluid 130 in the vessel. As is illustrated in Fig. 5 of Wong, and as described at column 4, lines 28-40, the end portion 122 of each test strip 120 exits through an exit port 90, and the end portions 122 and the exit ports 90 are surrounded by the rim 92 on the bottom side 78 of the cap. In Wong, the end portions 122 of each test strip do not extend into the liquid sample space 130 of the interior sample chamber 38 when the cap is placed on the container. As is described in Wong at column 3 line 50, to column 4, line 44, the carrier 50 is provided to bring liquid sample up to the test strip end portions 122, because the test strip end portions do not extend into the liquid sample space of the interior sample chamber when the cap is placed on the container.

Forsberg et al. was not cited as disclosing a wick that extends into a sample when the cap is on the container. Figs. 3 and 16 of Forsberg et al. show a container 25, 200, with a liquid sample 30, 202, with wicks 3, 120 in the cap and separated from the liquid sample space in the container by the base of a reservoir 18, and a wick chamber 118.

It is therefore respectfully submitted that Wong and Forsberg et al., taken either individually or in combination, do not teach, disclose or suggest wick mounted to the cap of a container and extending into the liquid sample space of the interior sample chamber when the cap is placed on the container, as is recited in Claims 15 and 20.

**2. THE PRIOR ART CITED DOES NOT DISCLOSE AN
ANNULAR BRIDGING WICK PIECE ADJACENT TO AND
IN FLUID COMMUNICATION WITH A WICK, AND IN
IMMEDIATE CONTACT WITH AN ASSAY STRIP OR
STRIPS FOR CONDUCTING A LIQUID SAMPLE FROM
THE WICK TO THE ASSAY STRIP OR STRIPS**

Claim 15 recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip." Claim 20 similarly recites "an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strips for conducting the liquid sample from said wick to said assay strips."

Forsberg et al. was cited as disclosing a wicking pad 128 in contact with a wick 120 and that is used to bridge the wick 120 to an assay strip. The Examiner argued that it would have been obvious to modify Wong to include the liquid conveying system of Forsberg et al. to facilitate liquid transport of a liquid sample to a test strip without

flooding the test strip. It is respectfully submitted that Applicant has not claimed a liquid conveying system as disclosed in Forsberg et al. to facilitate liquid transport of a liquid sample to a test strip without flooding the test strip.

Forsberg et al. discloses a first rectangular wicking pad 128 mounted between wicks 120 and test strips 124 at one end of the test strips, and a second rectangular wicking pad 130 mounted in contact with the other ends of the test strips. In the Advisory Action of August 30, 2004, the Examiner argued that "it is known in the art of test strips that annular bridge pieces are used to facilitate in [sic] liquid transport of th [sic] liquid sample to the test strip withou [sic] flooding the test strip." The Examiner failed to cite any art whatsoever disclosing the claimed annular bridge piece.

It is further respectfully submitted that there is no disclosure, suggestion or motivation in Wong or Forsberg et al. to combine such an annular bridge piece with the end portions of the test strips of Wong or Forsberg et al. At column 13, lines 54-56, Forsberg et al. describes the second rectangular wicking pad as drawing liquid along the length of the test strips, and prevents flooding of the test strips. It is respectfully submitted that placement of the claimed annular bridging wick piece in contact with the end portions of the test strips of Wong or Forsberg et al. would not draw liquid along the length of test strips and prevent flooding of the test strips as suggested by the Examiner. Instead, the claimed annular bridging wick piece placed at the ends of the test strips in Wong or in Forsberg et al. would contact the test strips at portions of the test strips other than at the end portions of the test strips as well, and instead of drawing liquid along the test strips as in Forsberg et al., would deliver additional liquid sample to the test strips

and interfere with the operation of the test strips. It is therefore respectfully submitted that it would not have been obvious from Forsberg et al. to combine the claimed annular bridging wick piece in immediate contact with the wick of Wong, based upon the disclosure of a rectangular wicking pads 128 and 130 in Forsberg et al. It is respectfully submitted that Forsberg et al. does not teach, disclose or suggest an annular bridging wick piece adjacent to and in fluid communication with a wick, and in immediate contact with an assay strip for conducting a liquid sample from the wick to the assay strip, as is claimed.

It is therefore respectfully submitted that Wong and Forsberg et al., taken either individually or in combination, do not teach, disclose or suggest an annular bridging wick piece adjacent to and in fluid communication with a wick, and in immediate contact with an assay strip or strips for conducting a liquid sample from the wick to the assay strip or strips, as is recited in Claims 15 and 20.

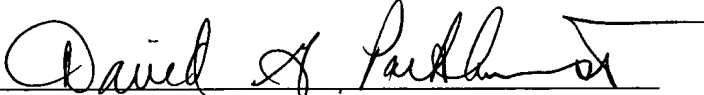
IX. CONCLUSION

For the foregoing reasons, it is submitted that the present invention as claimed is not rendered obvious from Wong in view of U.S. Patent No. 6,168,758 to Forsberg et al., and that the Examiner's rejections of 15-16, 18, 20, 21 and 23 were therefore erroneous.

Appellant respectfully requests reversal of the rejection of 15-16, 18, 20, 21 and
23.

Respectfully submitted,

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X. APPENDIX

CLAIMS ON APPEAL:

Claim 15. Assaying apparatus for collecting and analyzing a liquid sample for an analyte in the liquid sample, the apparatus comprising:

a container having an interior sample chamber with a liquid sample space, said container having a surface defining an opening in communication with said interior sample chamber;

a cap adapted to be placed on said container opening for closing said container opening and sealing said container;

an assay strip disposed in said cap, said assay strip having an assay region disposed in said cap for indicating the presence or absence of an analyte in a liquid sample placed in said liquid sample space of said interior chamber, and said cap including a separator member disposed between said assay strip and said interior sample chamber for separating said liquid sample space from said assay region of said assay strip;

a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container, said wick being in fluid communication with said assay strip for conducting a portion of the liquid sample from said interior chamber to said assay region of said assay strip; and

an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strip for conducting the liquid sample from said wick to said assay strip.

Claim 16. The assaying apparatus of Claim 15, further comprising a transparent cover over said assay strip permitting observation of the results of the assay.

Claim 18. The assaying apparatus of Claim 15, wherein said assay strip comprises wicking material for conducting the liquid sample from said wick to said assay region of said assay strip.

Claim 20. Assaying apparatus for collecting and analyzing a liquid sample for the presence or absence of a plurality of analytes in the liquid sample, the apparatus comprising:

a container having an interior sample chamber with a liquid sample space, said container having a surface defining an opening in communication with said interior sample chamber;

a cap adapted to be placed on said container opening for closing said container opening and sealing said container;

a plurality of assay strips disposed in said cap, each assay strip having an assay region disposed in said cap for indicating the presence or absence of one of a plurality of analytes in a liquid sample placed in said liquid sample space of said interior chamber, and said cap including a separator member disposed between said assay strips and said interior sample chamber for separating said liquid sample space from said assay region of said assay strip;

a wick mounted to said cap and extending into said liquid sample space of said interior sample chamber when said cap is placed on said container, said wick being in fluid communication with said assay strip for conducting a portion of the liquid sample from said interior chamber to said assay region of said assay strip; and

an annular bridging wick piece adjacent to and in fluid communication with said wick and in immediate contact with said assay strips for conducting the liquid sample from said wick to said assay strips.

Claim 21. The assaying apparatus of Claim 20, further comprising a transparent cover over said assay strips permitting observation of the results of the assays.

Claim 23. The assaying apparatus of Claim 20, wherein said assay strips comprise wicking material for conducting the liquid sample from said wick to said assay regions of said assay strips.

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